

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. S-2510

PETITION OF CLIFFORD HALL AND DIANA POST

OPINION OF THE BOARD

(Hearing held June 19, 2002)

(Effective date of Opinion: August 5, 2002)

Case No. S-2510 is the petition of Clifford Hall and Diana Post for a special exception pursuant to Section 59-G-2.21 (charitable or philanthropic institution) of the Zoning Ordinance to permit the operation of the Rachel Carson Council, Inc. headquarters in an existing dwelling. Waivers are requested, pursuant to Section 59-E-4.5, of certain requirements of Section 59-E relating to the size, setback, striping, access and landscaping of parking spaces and a waiver is requested pursuant to Section 59-G-2.21(c)(1), of the road classification requirement of Section 59-G-2.21(a)(1)(ix).

Pursuant to Section 59-A-4.11(a) of the Zoning Ordinance, the Board of Appeals ("Board") held a hearing on June 19, 2002 at which time evidence and testimony was submitted to the Board in support of the petition. There was no opposition.

Norman G. Knopf, Esquire appeared on behalf of the petitioners. Martin Klauber, Esquire, People's Counsel for Montgomery County, also appeared and supported the granting of this petition with the conditions enumerated below.

The subject property is Lot 11, Block E, Quaint Acres Subdivision, located at 11701 Berwick Road, Silver Spring, Maryland, in the RE-1 Zone.

Decision of the Board: Requested special exception and waivers
GRANTED,
subject to conditions enumerated below.

EVIDENCE PRESENTED TO THE BOARD

1. Petitioners, Dr. Diana Post and Clifford Hall (husband and wife) are the owners of the subject a single family residence which is a detached home at 11701 Berwick Road in the Quaint Acres Subdivision of Silver Spring, Maryland. (Exhibit No. 3) The house is located in the RE-1 Zone and is on a 48,427 square foot lot. (Exhibit No. 14, p. 2) Dr. Diana Post is the Executive Director of the Rachel Carson Council, Inc. ("Council"). (Exhibit No. 3) Clifford Hall is the Special Advisor to the Council. (Tr. 19)

2. The Council is a non-profit organization with its primary function to conduct research and educational activities for the benefit of the public in such areas as pesticide effects on human health and the environment, the benefits of alternative pest control methods, and protecting ecosystems from pesticide damage. (Exhibit Nos. 3, 20 (a) & (b), 22) The Council has federal tax exempt status under 26 U.S.C. §501(c)(3). (Exhibit No. 3) Petitioners have applied for a special exception for a charitable or philanthropic institution under §59-G-2.21 to permit their house to be headquarters of the Council. (Exhibit Nos. 3, 19)

3. Petitioners request waivers, pursuant to §59-E-4.5, of requirements of §59-E relating to size, setback, striping, access and landscaping of parking spaces. A waiver pursuant to §59-G-2.21(c)(1) of the road classification requirements of §59-G-2.21(a)(1)(ix) is also requested.

4. The Petitioners testified in support of their petition and request for waivers. Ralph Schofer, P.E., testified on behalf of petitioner as an expert traffic engineer. Joel Gallihue, Zoning Analyst of the staff of the Maryland National Park and Planning Commission, also testified in support of the petition and waivers, explaining the staff's and Planning Board's recommendations of approval. (Exhibit Nos. 14, 17) The Quaint Acres Citizens' Association submitted a letter of support of the petition, including the requested waivers. (Exhibit No. 15)

5. The property which is the subject of the special exception was the home of scientist-writer Rachel Carson. (Exhibit No. 3) She built the home in 1957 and started work on Silent Spring while living there and in 1962 when Silent Spring was published. (Exhibit No. 3) Rachel Carson died in 1964, and petitioners purchased the house in 1996. (Exhibit No. 3) The property has been designated a National Historic Landmark (Exhibit No. 10, p.28), and has been designated an Historic Resource by Montgomery County. (Exhibit Nos. 3, 9, 14, p.5)

6. Under the special exception, the headquarters of Council, presently located in one room rented in the Audubon Naturalist Society's building on Jones Mill Road, would be relocated to the subject property. (Tr. 44) The headquarters would continue to have two full-time employees, of which Dr. Post is one, and three part-time employees. (Tr. 13) Currently, one part-time employee works four hours, twice a week and the other two part-time employees each work about three hours per day up to five times a week. (Tr. 13) A maximum of four

employees would work at the headquarters at any one time. (Exhibit Nos. 3, 15, p. 2)

7. The hours of the Council staff are Monday through Friday, 9:00 a.m. to 5:00 p.m. (Exhibit No. 3)

8. Much of the Council's work is carried out by consultants located off-site with whom communication is by e-mail, telephone, fax and regular mail. (Tr. 13; Exhibit No. 3) Visits to the headquarters by consultants or an accountant are infrequent. (Exhibit No. 3) Mail is not sent to the headquarters but to a post office box. (Tr. 11) The Council does not invite walk-in visits and inquiries and is not prepared to serve walk-ins. (Exhibit No. 3) Visitors to the headquarters are therefore very infrequent. Last year there were a total of eight. (Tr. 44)

9. The Council presently maintains a log book of visitors and will continue to do so. (Tr. 18)

10. Three times per year a meeting of the Council's Board of Directors may be held at the subject property. Attendance is normally twelve to fifteen persons. (Exhibit No. 3) The National Park Service, who oversees National Historic Landmarks, seeks to have privately owned landmarks at least minimally accessible to the public. Once a year, an "open house" may be held. (Exhibit Nos. 3, 15, p. 3) The last open house was attended by 50 to 75 persons, about half of whom were neighbors of the subject property. (Tr. 50)

11. The Council must vacate its current rented quarters by September 1, 2002. (Exhibit No. 15, p. 2) The house that is subject to the special exception is presently rented to a family which has requested permission to remain until no later than December 31, 2002, in order to find suitable substitute housing. (Exhibit No. 15, p.2) The Petitioners would like to honor this request with the understanding that these tenants must vacate the house by that time whether or not the tenants have found substitute accommodations. (Tr. 19 - 20)

12. The Council seeks to move its headquarters to the subject property as soon as possible, while the current tenants are also there. The house is a one story ranch house, with a basement. Due to the slope of land, the basement has windows which overlook the yard and an entrance-way door directly accessing the yard. (Exhibits Nos. 3, 4, 6 (b) & (c)) The Council will occupy the finished part of the basement, including what is currently the recreation room, bedroom, bathroom, and would occupy a portion of the first floor, a study. (Exhibit Nos. 3, 14, p.3) The remainder of the house will be occupied by the current tenants. (Exhibit No. 3) Once the current tenants leave, the Council may be the sole occupant of the house, or another person or family may occupy a portion of the house in addition to the Council. (Exhibit No. 3) Such person or family would be Petitioners, as owners, or some other person who has a direct relationship with the Council such as an employee or director. (Exhibit No. 3; Tr. 20 - 21)

13. The Council will use approximately 1,337 square feet of the house for office use. (Exhibit No. 14, p. 3) Four parking spaces are required by the Zoning Code based upon 2.9 spaces per 1,000 square feet of office use. (Exhibit No. 14, p. 3 and attachment no. 1, p. 4 (§59-G-2.21(b)(iii); §59-E-3.2 and 3.7)) Two additional spaces are required if the house is also used for a residence. (§59-E-3.7) (Exhibit No. 14, p. 3)

14. Petitioners testified that six parking spaces would be adequate and that compliance with a requirement limiting on-site parking to six cars readily could be complied with. (Tr. 17 - 18, 47 - 49) Even with two cars for tenants, that leaves four cars for Council use. No more than four employees of Council will be on-site at the same time. This includes two part-time employees who work only a few hours per day. (Tr. 13; Exhibit No. 3) Arrangements have been made for additional off-site parking for those infrequent occasions where there might be a consultant or other visitor while there are already six cars parked on the site. The Council has an agreement with St. Stephen Lutheran Church, located 6/10 of a mile walking distance away, for use of three spaces in its parking lot. (Exhibit No. 15 - Church Letter; Tr. 48) With regard to the Board of Directors meetings three times per year, Petitioners represented that the cars of the twelve to fifteen people who attend can be accommodated by use of the church parking lot and other off-site locations other than the public street so that the six on-site parked car limitation will not be exceeded. (Exhibit No. 15, p. 3) If such a meeting would require exceeding these limits, the Board meetings would be held at another location. (Tr. 49; Exhibit No. 3) With regard to the annual open house, Petitioners represented that no more than six cars will be parked on-site, with the remainder parked on the public street. (Tr. 50; Exhibit 15, p. 3)

15. The Petitioners proposed to provide the six on-site parking spaces in the existing driveway by parking cars in tandem. A site plan drawn to scale shows a long existing asphalt driveway that could readily accommodate six park cars. (Exhibit No. 15; Tr. 55). Photographs of six cars actually parked in the driveway show that the due to topography, woods, evergreen trees and shrubbery, the cars were not visible at all or minimally visible from the adjoining property or from a side view from the street. (Exhibit Nos. 26 (a) - (e), 27 (a) - (c); Tr. 55, 59 - 62) Due to the length of the driveway and the fact that it bends, only three of the six parked cars are visible at the driveway entrance at Berwick Road, looking directly into the driveway. (Tr. 60; Exhibit Nos. 15, 26 (a) - (e))

16. The Petitioners initially proposed altering the existing driveway by widening small areas for parking. (Exhibit No. 7 (b)) They also initially proposed removing an existing shed. (Exhibit No. 7 (b)) In order to make as few changes as possible to this historic property, Petitioners modified their plans to eliminate these changes. (Exhibit No. 15; Tr. 47-48) Petitioners propose to construct a solid fence for screening along the property line in the rear of the driveway, (Exhibit No. 3, as set forth in Exhibit No. 7 (b)). Petitioner Hall explained that the

fence will supplement the screening between the subject property and the adjacent house at 410 Apple Grove Road. (Tr. 55)

17. The neighborhood of the subject property is The Quaint Acres subdivision in the area of Berwick Road and a park of Apple Grove Road closest on the site. (Exhibit Nos. 13, 14, p.2; Tr. 56) Many of the homes, in the neighborhood, including homes on Berwick Road, have driveways larger than Petitioners' and that are not as well screened. (Tr. 56, 62 - 63; Exhibit Nos. 24 (a) - (c), 28)

18. Mr. Schofer, testifying as a traffic engineer, stated that where the driveway of the subject property meets Berwick Road, the horizontal sight distance is excellent and therefore provides for safe operation of this intersection. (Tr. 58 - 59; Exhibit No. 25)

19. Petitioners have modified their initial petition at the request of the Technical Staff to obtain a waiver of a road classification requirement and waivers of specified parking setback, size, striping, access and landscaping standards. (Exhibit Nos. 14, pp. 4-5, 15, pp. 3-4) Notice of this request for waivers was provided to each of the adjoining and confronting property owners as well as the Quaint Acres Citizens Association by Petitioners' delivering by hand a letter to each, on May 25, 2002. (Exhibit No. 15, p. 4 and the attached letter; Tr. 55) The letter advised of the waiver requests and informed the residents of their right to participate in the May 30th hearing before the Planning Board and on the June 19th hearing before this Board.

20. There will be no signage seen from the public street indicating the presence of the Council. A small sign, with the letters "Council", about 12" X 7", will be located off the driveway to designate the path to the basement entrance. (Exhibit Nos. 3, 7 (b))

21. The Technical Staff has determined that all of the requirements for the approval of the special exception are met with the exception of certain standards relating to parking and road classification. (Exhibit No. 14) The Staff further determined that the standards which were not met could be waived pursuant to waiver provisions set forth in the Zoning Code. (Exhibit No. 14; Tr. 32-34, 40-43) The Staff and the Planning Board recommended approval of the waivers. (Exhibit Nos. 14, 17)

22. Section 59-G-2.21(a)(2)(vi) requires a charitable or philanthropic institution to be located on a road having more than one through travel lane in each direction of travel. Berwick Road has only one through lane of travel in each direction. This requirement may be waived if the property is a historic resource, if the road access will be safe and the waiver will not cause significant adverse impact. (§59-G-2.21(c)(1) & (3)) The Staff recommended the waiver since the property is designated an historic resource and the limited scope of operation satisfies the waiver standards. (Exhibit No. 14, p. 5; Tr. 43-44)

23. Based upon the Zoning Ordinance requirement of two parking spaces for residential use and 2.9 parking spaces per 1,000 square feet of office use, the staff determined that six parking spaces were required and this requirement was met by the tandem parking in the existing driveway. (Exhibit No. 14, pp. 3 & 6. (§59-G-2.21(b)(iii); §59-E-3.2 & 3.7))

24. Under §59-E-2.83, parking for six cars constitutes a parking facility for which the Ordinance prescribes standards relating to (i) setbacks; (ii) arrangements and marking of parking spaces; (iii) size of parking spaces; (iv) access and circulation; and (v) landscaping. To satisfy these parking facility requirements would require a significant alteration of the historic property. (Tr. 24-25) A waiver pursuant to §59-E-4.5 is requested to preserve the character of this historic property. (Tr. 24-25; Exhibit Nos. 14, p. 6, 17)

- (i) Section 59-E-2.83 requires the parking facility to be setback 35 feet from the rear property line and 34 feet from the side property line. The existing driveway is located about 15 feet from the rear line and 10 feet from the side line, at the closest point, requiring a waiver of 20 feet from the rear yard setback requirement and 24 feet from the side. (Exhibit No. 14, pp. 4 & 6; Tr. 32-34) A waiver will permit the continued use of the existing driveway, preserving the historic condition of the property. Significant existing vegetation screens the parking facility and permits it to be compatible with the neighborhood without the required setback. (Exhibit No. 14, pp. 4 & 6; Tr. 34)
- (ii) Section 59-E-2.1 requires striping to mark separate and individual parking spaces. A waiver of this requirement to permit tandem parking is requested given the historic status of the property, its residential context, and the limited scope of operations by user well familiar with the site. (Exhibit No. 14, p. 4)
- (iii) Section 59-E-2.22 sets dimensional requirements for various configurations of parking spaces. Each configuration references a travel lane and curb to delineate each space. Tandem parking will not meet these requirements. A waiver is requested given the historic nature of the property, its residential context and the limited scope of operation by users well familiar with the site. (Exhibit No. 14, pp. 4-5; Tr. 42)
- (iv) Section 59-E-2.4 requires each parking space to have direct access to a street via interior isles. This is not possible with tandem parking and providing aisles would require significant expansion of paved area. A waiver is requested given the historic status of the property, its residential context, and the limited scope of operations

by users well familiar with the site. (Exhibit No. 14, p. 5; Tr. 41-42, 44)

- (v) Section 59-E-2.7 sets minimum landscaping requirements intended to alleviate adverse visual effects associated with the parking facility. A waiver is requested as no adverse visual effects are anticipated because of the existing heavy vegetation, and no changes are being proposed to the existing driveway. Further, petitioners will construct a six foot board fence along a portion of the side property line. (Exhibit Nos. 7(b) 14, p. 5)

25. The Technical Staff has recommended that a waiver of the parking requirements of Section 59-E be granted pursuant to Section 59-E-4.5 as the parking requirements of §59-E-4.2 are not necessary to accomplish the objectives of Section 59-E-4.2. (Exhibit No. 14, p. 7)

- (i) One of the objectives is to protect any adjoining land or public road that abuts the parking facility. Such protections include protections from noise, glare, lights, fumes, by such means as landscaping or planting. The number of vehicles is limited to six, and existing vegetation, a proposed board fence, topography, and driveway length all screen adjacent properties and obscure the view of parked cars from public street.
- (ii) Another objective is to assure the safety of pedestrians and motorists within the parking facility. Pedestrians and motorists within the parking facility will be able to maneuver off-street with a clear view. Potential conflicts of tandem parking will be mitigated by the fact the operations do not typically include visits from guests who would be unfamiliar with the parking arrangement. Daily office activities do not require many trips.
- (iii) Another objective is the safe circulation of traffic within the parking facility and proper location of entrances and exits to public roads to prevent traffic congestion. Low volume of traffic on Berwick Road and the nature of the operation makes congestion unlikely.
- (iv) A final objective is to have appropriate lighting if the parking is to be used after dark. This objective is not applicable. The operation will typically be in daylight as the hours of operation are 9:00 a.m. to 5:00 p.m. (Exhibit No. 14)

26. The subject property is located in Fairland/White Oak Policy Review Area that is in moratorium for residential and non-residential development. The proposed special exception is nevertheless permitted because: (i) with regard to the single family residential use, there is no increase in the number of housing

units since the property is presently used as such a dwelling and any peak hour trips generated by the tenants would be considered existing trips; and (ii) with regard to the proposed non-residential use, it falls within the de-minimis category, since five or fewer new peak hour trips would be generated. (Exhibit No. 14, p. 9)

FINDINGS OF THE BOARD

Based on the Petitioners' binding testimony, the evidence of record and the exhibits presented at the public hearing, the Board concludes that the requested special exception with waivers can be granted with the conditions set forth below:

STANDARD FOR EVALUATION (§59-G-1.2.1)

A special exception must not be granted absent the findings required by the Article. In making these findings, the Board of Appeals...must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

The Board interprets this section of the Zoning Ordinance to require the following analysis. The Board must:

(1) Make a determination as to the general neighborhood affected by the proposed use.

(2) Establish those inherent, generic physical and operational characteristics associated with a given use, in this case the operation of a charitable or philanthropic institution. The evaluation standard does not include the actual physical size and scale of operations in the use proposed.

(3) Determine separately the physical and operational characteristics of the charitable or philanthropic institution special exception use proposed by the Petitioners.

(4) Compare the generic physical and operational characteristics with the particular characteristics of the proposed special exception. Inherent adverse

effects are those characteristics of the modification that are consistent with the generic characteristics. Non-inherent adverse effects are those characteristics of the modification that are unique given the facts of a particular case.

Applying the above analysis to this case, the Board finds as follows:

(1) The General Neighborhood

The neighborhood affected by the proposal is small due to the small scale of the operations of the proposed special exception. The neighborhood consists of the properties closest to the subject site, the properties along Berwick Road and the properties along Apple Grove Road between Berwick Road and Milestone Drive. (Exhibit Nos. 3, 13)

(2) Evaluation Standard - Physical and Operational Characteristics

The Board recognizes and adopts the Technical Staff's recommendation, as applied in previous special exception cases, of the seven criteria used to identify the physical and operational characteristics of a use. Those are size, scale, scope, lighting, noise, traffic, and the environment. The Board finds that the primary physical characteristic necessarily associated with a charitable or philanthropic institution is a building to house offices and an exterior parking area. The primary operational characteristics necessarily associated with that use are presence of employees working in the building and the traffic generated by the employees and visitors.

(3) Proposed Use - Physical and Operational Characteristics

The proposed use here does not involve any physical change to the existing building, which is a single family detached residential home, or to the grounds, which are well landscaped and contain an existing long asphalt driveway that can accommodate six cars. The number of cars parked on site is limited to six. The parked cars are well screened by natural vegetation and topography, which screening will be supplemented by a board fence. The number of employees is limited to two full-time and three part-time, with a maximum of four on-site at any one time. Hours of operation are Monday through Friday, 9:00 a.m. to 5:00 p.m. Visitors are few and infrequent. Three times a year the Board of Directors meetings will be held on site, consisting of twelve to fifteen persons. All parking for the Board of Directors' meetings beyond six cars will be off-site and not on the street. Once a year, an open-house may be held which will result in cars parked on the street.

(4) Comparison of Characteristics

The Board finds that the building and parking area relate to size or scale of operations, are well within the scope of generic characteristics for this use, and

are therefore inherent effects. The Board finds that the number of employees, visitors, traffic they generate and the number of parking spaces relate to size or scale of operations, are also well within the scope of generic characteristics for this use and thus are also inherent adverse effects. As will be discussed below, the impact of these inherent effects on nearby property and the neighborhood will be minimal to non-existent. This is due to the small scale of the operation of the special exception, limitations placed upon the number of parked cars and employees, the absence of any physical changes to the house and its grounds, and the presence of heavy vegetation which screens the existing driveway parking area.

The Board finds that there are no non-inherent adverse effects associated with this requested special exception.

GENERAL CONDITIONS (§59-G-1.21)

The Board makes the following findings with regard to the general condition requirements of §59-G-1.21

(a) *A special exception may be granted when the Board ... finds from a preponderance of the evidence of record that the proposed use:*

(1) *Is a permissible special exception in the zone.*

The use charitable and philanthropic institution is permissible in the RE-1 Zone. The Rachel Carson Council, Inc. is such a use as it satisfies the requirements set forth in the Zoning Ordinance's definition of a charitable or philanthropic institution:

"A private, tax-exempt organization whose primary function is to provide either health, social, recreational, religious, or benevolent services, or research or educational activities in areas of benefit to the public such as health, medicine or conservation of natural resources..."

The Council is a private tax exempt organization whose primary function is to provide research and educational activities to the benefit of the public. (Exhibit Nos. 3, 20 (a) & (b), 22)

(2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

The proposed charitable and philanthropic institution complies with the standards and requirements set forth in Division 59-G-2., except for certain standards relating to parking and road classification. The Board finds that these standards may be waived, that the Zoning Ordinance's requirements for such waivers are met, and therefore, the Board has approved the requested waivers. (Exhibit Nos. 14, 15)

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

The subject property is covered by the 1997 White Oak Master Plan. The Board finds that the proposed location of the Council and its use are consistent with the recommendations in the approved and adopted master plan. (Exhibit No. 3, 9, 14, p.5) The Planning Board and the Technical Staff have concluded that the special exception would be consistent with the Master Plan and both have recommended approval of the petition.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.*

The special exception will be in harmony with the general character of the neighborhood. There will be no exterior alterations to the house or the grounds. The house will remain a single family detached home with well landscaped grounds that are in harmony with other homes in the neighborhood which is composed in the area of Berwick Road and Apple Grove Road between Berwick Road and Milestone Drive in the Quaint Acres Subdivision. The asphalt driveway is smaller than driveways of many homes in the neighborhood. The intensity of activity and traffic generated by the proposed use is small. The basement and a part of the first floor of the ranch house will be used by the Council. The remainder of the first floor, until no later than December 31, 2002, will be used by

the current tenant. Thereafter, the entire house may be used solely by the Council, or the owners may occupy a portion of the house, or some other person who has a direct relationship with the Council may occupy a portion of the house. At all times, the number of cars parked on the site is limited to no more than six. The number of employees is limited to a total of five, two full-time and three part-time. Visitors are few and infrequent. Mail is delivered to a post office box. The hours are limited, Monday through Friday, 9:00 a.m. to 5:00 p.m.. The amount of traffic generated is very small and will be in harmony with the character of the neighborhood. (Exhibit Nos. 3, 14, 15; Tr. 44)

The six cars will be parked in the existing asphalt driveway. Due to the length of the driveway, the heavy existing woods, evergreen trees, shrubbery, and the topography, these cars will be well screened from the view of the neighboring properties. The screening will be supplemented by a board fence along the side property line. Because the driveway bends, no more than three cars will be visible from the street, looking directly into the driveway. (Exhibit Nos. 3, 15, 26 (a) - (c); Tr. 55, 59-62)

The six parking spaces on site, plus three parking spaces available to the Council at the nearby St. Stephen Lutheran Church, will accommodate all of the parking needs of the Council without use of street parking with two possible exceptions. Three times a year the Board of Directors may meet at the subject property. Petitioners have represented that if additional parking spaces are needed for the twelve to fifteen person attending the Board of Directors meetings, beyond the six on-site and three Church spaces, they will arrange for further off-site spaces, not on a public street. In the alternative, the Board of Directors would meet at another location. Once a year, on a weekend afternoon, an open house may be held which could result in parking on the public street. This is comparable to parking of guests attending a party at a private residence and is not inconsistent with the harmony of the general character of the neighborhood. There are no other similar special exceptions in the neighborhood. (Exhibit No. 3, 14, and attachment no. 1, p. 2, 15; Tr. 55, 59-62)

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The special exception will not be detrimental to the peaceful enjoyment or economic value or development of surrounding properties or the general neighborhood. As discussed above, there are no external changes to the house or grounds. Parking will be on existing driveway and limited to six cars, and the cars will be well screened. Activity on the site and traffic will be normal. Employees are limited to total of five, including three part-time, with no more than four on site at the same time. Visitors are few and infrequent. The hours

are limited to 9:00 a.m. to 5:00 p.m., Monday through Friday. (Exhibit Nos. 3, 14, 15; Tr. 48-50)

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The proposed use will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the site. All work will take place indoors. The only outdoor activity will be the parking of up to six cars. Office hours are 9:00 a.m. to 5:00 p.m, Monday through Friday. The parking spaces are well screened and located a sufficient distance from nearby homes so that the cars will not cause objectionable effects. (Exhibit Nos. 3, 6 (a) - (c), 14, including attachment nos. 2 & 3, 15, 26(a) - (c))

- (7) *Will not, when evaluated in conjunction with existing and approved special exception in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

There are no special exceptions in the Quaint Acres Subdivision. (Exhibit No. 14, attachment no. 1, p. 2)

- (8) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*
 - (i) *If the special exception use requires approval of a preliminary plan of subdivision the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.*
 - (ii) *With regard to findings relating to public roads, the Board must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.*

The special exception use does not require approval of a preliminary plan of subdivision. There is no deficiency apart from public road of any public facilities. (Exhibit No. 14, attachment no. 1, p. 3) With regard to public roads, the site is located in the Fairland/White Oak Policy Area which is in a moratorium for residential and non-residential development. (Exhibit No. 14, p. 9) Because the building to be used by the Council is an existing single family detached residence, and due to the small number of trips to be generated by the use, the traffic impact is considered de minimus and thus, permitted under the provisions governing the moratorium. (Exhibit No. 14, p. 9)

CHARITABLE OR PHILANTHROPIC INSTITUTION (§59-G-2.21)

Development Standard.

A special exception may be granted for a charitable or philanthropic institution subject to the following requirements:

- (1) *In the one-family residential zones regulated by §C-1.32, the development standards are those of the applicable zones except:*
 - (i) *Minimum side yard setback: twice the minimum required by §C-1.32.* The minimum side yard setback for the house in the RE-1 zone is 17 feet so twice that is 34 feet. The house meets the standard as it is situated 50 feet from the side property line. (Exhibit No. 14, pp. 6, attachment No. 1, p. 3) A waiver is approved for the parking setback as discussed below.
 - (ii) *Minimum frontage: twice the minimum required by §C-1.32.* The minimum frontage for RE-1 Zone is 125 feet, so twice that is 250 feet. The standard is met as the frontage is approximately 450 feet. (Exhibit No. 14, attachment no. 1, p. 4)
 - (iii) *Minimum green area: 70 percent in RE-1, RE-2, and RE-2C zones.* The standard is met as the green area is approximately 90 percent. (Exhibit No. 14, attachment no. 1, p. 4)
 - (iv) *Maximum FAR: 0.25 or 100,000 square feet, whichever is less, for office uses.* The FAR is 0.07. (Exhibit No. 14, attachment no. 1, p. 4)
 - (v) *Maximum building height: 50 feet in RE-1, RE-2, RE-2C and RMH zones.* The building height satisfies the

standard as it is one story with basement. (Exhibit No. 14, attachment no. 1, p. 4)

- (vi) *The property must front on and have direct access to a public street or roadway having more than one through travel lane in each direction of travel. The property does not meet this standard as Berwick Road has only two travel lanes, one in each direction. A waiver of this standard is approved for the following reasons.*

WAIVER OF ROAD CLASSIFICATION

Section 59-G-2.21(c)(1) provides “[I]f the property is designated as an historic resource by the master plan for historic preservation, the Board may waive ...” the road classification of §(a)(2)(vi).

The subject property is designated such an historic resource and therefore, eligible for a waiver. (Exhibit Nos. 3, 9, 10, 14, p. 5)

Section 59-G-2.21(c)(3) further provides:

The Board must not grant any waiver as stated in Sections (c)(1) and (2) unless it finds that:

- (i) Road access will be safe and adequate for the anticipated traffic to be generated;*
- (ii) Road access will not have a significantly adverse impact on the surrounding neighborhood; and*
- (iii) The grant of the waiver will not cause other significant adverse impacts on the surrounding neighborhood.*

The Board finds that each of these criteria is met and grants the waiver. The scope of operations of the special exception is limited, with few employees, 2 full-time and three part-time, and minimal visitors. (Exhibit No. 3, 14, p. 5, 15) This will result in little traffic. More travel lanes are not required to handle the traffic. Berwick Road at the subject property, including at the point at which the driveway accesses the street, is straight and horizontal sight distance is excellent. (Exhibit No. 13, 25; Tr. 58-59) The Board finds that road access is safe and adequate and that the road access will not cause a significantly adverse impact on the surrounding neighborhood nor will the grant of the waiver cause any other significant adverse impact.

NUMBER OF PARKING SPACES

1. *Off-street parking space must be provided as follows:*

(a) *Office: same as general office under §E-3.7.*

Based upon the Zoning Ordinance requirement of 2.9 parking spaces per 1,000 square feet of office space, the Board finds that four parking spaces are required. (§59-E-3.2, 3.7; Exhibit No. 14, p. 3) The house also will be used by the current tenants as a residence until no later than the end of this year, and therefore may be used as a residence by someone with a direct relationship with the Council. Therefore, two additional parking spaces are required. (§59-E-3.7 Exhibit No. 14, p. 3) The requirement for a total of six parking spaces is satisfied by in tandem parking in the existing asphalt driveway.

WAIVERS OF SECTION 59-E STANDARDS

The parking for six cars is a parking facility under §59-E-2.8. The Zoning Ordinance prescribes standards for such a facility relating to: (i) setbacks; (ii) arrangements and marking of parking spaces; (iii) size of parking spaces; (iv) access and circulation; and (vi) landscaping.

To meet these standards would require a significant alteration of the grounds of the historic property. A waiver of these standards is requested to preserve the property in its existing condition. (Exhibit Nos. 14, 15) The Board finds it has the authority to grant such waiver, that the criteria for waiver are satisfied, and therefore grants the waiver.

SECTION 59-E-4.5 WAIVER - PARKING, SETBACK, DESIGN AND LANDSCAPING STANDARDS

The Board of Appeals may waive any requirement in this Article not necessary to accomplish the objectives in §59-E-4.2, and in conjunction with reductions may adopt reasonable requirements above the minimum standards. Any request for a waiver under this Section must be referred to all adjoining property owners and affected citizen associations for comment before a decision on the requested waiver. The adjoining property owner and the affected citizens association have received notice of the request for waivers, including the dates of the Planning Board's and the Board's hearings on these requests. (Exhibit No. 15, p. 4 and the attached letter; Tr. 55) None appeared before this Board, in person or in writing, in opposition.

For the reasons discussed below, the Board finds that the requirements for which waivers are requested are not necessary to accomplish the objectives in §59-E-4.2 and therefore grants the waiver.

SECTION 59-E-4.2. PARKING FACILITIES PLAN OBJECTIVES

A parking facility plan shall accomplish the following objectives:

- (a) The protection of the health, safety and welfare of those who use any adjoining land or public road that abuts a parking facility. Such protection shall include, but shall not be limited to, the reasonable control of noise, glare or reflection from automobiles, automobile lights, parking lot lighting and automobile fumes by use of perimeter landscaping, planting, walls, fences or other natural features or improvements.*
- (b) The safety of pedestrians and motorists within a parking facility.*
- (c) The optimum safe circulation of traffic within the parking facility and the proper location of entrances and exits to public roads so as to reduce or prevent traffic congestion.*
- (d) The provision of appropriate lighting, if the parking is to be used after dark.*

(i) Waiver of Setbacks. §59-E-2.83 requires the driveway parking spaces, as a parking facility, to be set back 35 feet from the rear property line and 34 feet from the side property line. At the closest point, the existing driveway is 15 feet from the rear line and 10 feet from the side line, requiring waivers of 20 feet from the rear yard setback and 24 feet from the side yard setback. (Exhibit No. 14, pp. 4 & 6; Tr. 32-34) The Board finds that moving the parking facility to accommodate these setbacks would significantly alter the grounds of this historic property. The existing driveway parking area is well screened from adjoining properties by heavy vegetation and topography. A six foot high board fence will be located along a portion of the side property line. (Exhibit Nos. 7(b), 14, p. 5, 26 (a) - (e), 27 (a) - (c)) The number of cars is limited to six. The amount of traffic that will be generated by the special exception use is small. The hours of operation of the special exception are 9:00 a.m. to 5:00 p.m., Monday through Friday.

The Board finds that the waiver of the setback requirements under these circumstances will not have any adverse effects on the health, safety and welfare of the users of the adjoining properties or the public road abutting the driveway. Similarly, the setback waiver will not have any adverse effect on the safety of pedestrians and motorists within the facility, or will cause traffic congestion. The Council headquarters closes at 5:00 p.m. and thus, no new outside lighting is proposed or necessary. Since the Board finds that the setbacks are not necessary to accomplish the objectives of the parking facility, a waiver is granted. (Exhibit No. 14, p.4)

(ii) Waiver of Striping. §59-E-2.1 provides for striping to mark individual parking spaces. This provision will not be met by the tandem parking which is proposed. The Board finds that providing such marked spaces would require expansion of the asphalt parking area inconsistent with the preservation of existing conditions of the historic property and its residential character. The parking facility is limited to six cars and will be used by relatively few persons. All will be familiar with the facility. The Board finds that the striping requirement is not necessary, under these circumstances, therefore, a waiver is granted. (Exhibit No. 14, p. 4)

(iii) Waiver of Travel Lane. §59-E-2.22 provides for size, a travel lane, and curb delineation for each parking space. (Exhibit No. 14, p. 4) The tandem parking will meet the standard size perpendicular parking space, (8.5' X 18'). (Exhibit No. 14, p. 4) However, a travel lane and curbing will not be provided. The Board finds that meeting this requirement would require a considerable expansion of the parking facility which would be inconsistent with preserving the existing conditions of the historic property and its residential context.

The parking facility is limited to six cars. The users of the facility will be few in number and all will be familiar with the facility. The operation of the existing driveway ingress and egress is safe. (Tr. 58-59; Exhibit No. 25) The absence of a travel lane and curbing will not adversely affect the health, safety and welfare of users of the adjoining property or public street, nor will it give rise to any safety problems for pedestrians or motorists or cause congestion. The Board grants this waiver because the travel lane and curbing requirements, under the circumstances here, are not necessary to accomplish the objectives of the parking facility. (Exhibit No. 14, pp. 4-5).

(iv) Waiver of Interior Aisles. §49-E-2.4 provides for interior aisles to access the street. The proposed tandem parking does not have such aisles. The Board finds that such interior aisles would require a significant expansion of the paved area, inconsistent with its historical status. (Exhibit No. 14, p. 5) For the reasons set forth above relating to the grant of the other waivers, the Board finds that the aisle provision is not necessary to accomplish the objectives of a parking facility, and this waiver is also granted.

(v) Waiver of Landscaping. §59-E-2.7 provides for minimum landscaping standards in order to mitigate adverse visual effects of the parking facility. No changes to the existing driveway will occur. The Board finds that cars parked in the existing driveway are heavily screened due to trees, shrubbery and topography. (Exhibit Nos. 26 (d) & (e), 27 (a) - (c); Tr. 55, 59, 60, 62) Further, Petitioners will construct a six foot high board fence along a portion of the side property line. (Exhibit Nos. 7 (b), 14, p. 5) The Board finds that the health, safety and welfare of users of adjoining property owners will therefore be protected, including protection from noise, glare, automobile lights and fumes.

For these reasons, as well as the reasons discussed above with regard to the other waivers, the Board finds the landscaping requirement, under the circumstances here, also are not necessary to accomplish the objectives of a parking facility. The request for a waiver is granted.

Therefore, based upon the foregoing, the Board **GRANTS** the special exception for a charitable or philanthropic institution, with the requested waivers, subject to the following conditions:

1. The Petitioners are bound by their testimony and exhibits of record, the testimony of Petitioners' witness, representations of their attorney, to the extent that the evidence and representations are identified in this Opinion.
2. No more than six vehicles may be parked on site at one time.
3. The number of employees shall be limited to five, with no more than four employees on site at one time.
4. The hours of operation of the office shall be 9:00 a.m. to 5:00 p.m., Monday through Friday.
5. The current residential tenants shall vacate the premises no later than December 31, 2002. Any subsequent residential use of the house will be by a person who has a direct relationship with the Council.
6. A board fence, six feet in height, shall be constructed along a portion of the side property line as set forth in Exhibit No. 7 (b).
7. A log book of visitors which shall be maintained by the Council and available for inspection by the Department of Permitting Services.

On a motion by Louise L. Mayer, seconded by Alison Ishihara Fultz with Donna L. Baron and Angelo M. Caputo in agreement (Chairman Donald H. Spence, Jr., being necessarily absent), the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the Opinion stated above is adopted as the Resolution required by the Law as its decision in the above-entitled case.

Appeals

Donna L. Barron
Vice-Chairman, Montgomery County Board of

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 5th day of August, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit for a Special Exception.